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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,817	10/23/2003	Yoshitaka Mishima	2038-303	5433
23429 7590 10/16/2008 LOWE HAUPTMAN HAM & BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314				
EXAMINER ANDERSON, CATHARINE L				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/690,817

Applicant(s)

MISHIMA ET AL.

Examiner

Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-10, 14, 15, 19-21 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14, 15, 19-21, 23, 24 and 26-28 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 27 June 2008 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that Lovret fails to disclose the height of the annular portion gradually increasing, it is noted that the annular portion is set at an angle, as shown in figure 2, and therefore increases gradually toward the front and rear portions of the article.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4-10, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovret (3,532,093) in view of Allen et al. (6,168,584) and Johnson (3,858,584), and further in view of Tsuji et al. (6,808,516).
5. Lovret, as modified by Allen and Jonson, discloses all aspects of the claimed invention with the exception of the discharge containing portion containing absorbent material and the holder member having an X-shaped sheet.
6. With respect to claim 1, Lovret discloses a disposable wearing article 10, as shown in figure 1, comprising a holder member 15 having a front waist region 13 a rear waist region 14, and a crotch portion 12. The holder member 15 has an upper surface

and a lower surface, and a through-hole 40, as shown in figure 2. A receiving member comprises an annular portion 41 located on the upper surface of holder member 15, the annular portion being angled so as to gradually increase in height from the front to the rear portion of the article. The receiving member further comprises a discharge containing portion 50, shown in figure 6, which is positioned below the lower surface of holder member 15 in compartment 16, as shown in figure 2.

7. Allen teaches the use of absorbent material in the discharge receiving portion of a disposable wearing article, as shown in figure 4, to absorb the liquid in the receiving portion. The absorbent material 26U is bonded directly to the top wall of the discharge receiving portion around the opening, and is spaced apart from the bottom wall, as shown in figure 4. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the receiving portion of Lovret with absorbent material, as taught by Allen, to absorb liquid.

8. Johnson teaches a wearable article having a discharge containing portion 22, as shown in figure 3. The discharge containing portion 22 is exposed to the outside of the wearable article, as shown in figure 3, to allow for removal and replacement of the discharge containing portion, as disclosed in column 2, lines 6-8. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the wearable article of Lovret with a discharge containing portion that is exposed to the outside of the article, as taught by Johnson, to allow for removal and replacement of the discharge containing portion.

9. Tsuji teaches the use of a high elasticity segment 20 having an X-shape attached to a holder member 3 and 4, as shown in figure 5, to provide the article with a more secure, leak-proof fit, as disclosed in column 1, line 45, to column 2, line 8. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of Lovret with the holder member having a high-elasticity segment of Tsuji to provide a more secure, leak-proof fit.

10. With respect to claim 2, the front and rear waist regions 13 and 14 are releasably engaged by fasteners 21, as shown in figure 1.

11. With respect to claim 4, the annular portion 41 comprises flexible and elastically compressible foamed plastic, as disclosed in column 3, lines 35-37 and 3-15.

12. With respect to claim 5, the discharge containment portion 50 is liquid impervious, as disclosed in column 3, lines 38-40, and enlargeable under the weight of discharge, as disclosed in column 3, lines 64-67.

13. With respect to claim 6, the holder member is fully capable of being washed and reused.

14. With respect to claims 7-10, the holder member, as modified by Tsuji, comprises a topsheet 3, a backsheet 4, and an X-shaped elastically stretchable sheet 20, as shown in figure 5. The X-shaped sheet 20 is bonded between the topsheet and backsheet, as disclosed by Tsuji in column 7, lines 20-24.

15. With respect to claim 25, it would have been obvious to one of ordinary skill in the art at the time of invention to construct the discharge containing portion with gathers rather than an elastically stretchable material, since the use of gathers is well-known in

the art to provide a pouch with gathers to allow the pouch to expand rather than use an elastically stretchable material.

Allowable Subject Matter

16. Claims 14-15, 19-21, 23-24, and 26-28 are allowed.
17. The following is an examiner's statement of reasons for allowance: The prior art of record fails to disclose the claimed invention. Specifically, the closest prior art of record, to Lovert, fails to disclose the annular portion having a top surface having inner and outer circumferential surfaces, with the top surface being convex upward. The annular portion of Lovert fails to define a top surface having inner and outer circumferential surfaces that is convex upward. Therefore, the prior art of record fails to disclose or fairly suggest the claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./
Examiner, Art Unit 3761
/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761